FACT SHEET: USING THE TAX CREDITS

GENERAL INFORMATION:

1. The California Film Commission has been reserving tax credits for applicants since July 1, 2009. For taxable years beginning on or after January 1, 2011, qualified taxpayers or their affiliates are allowed a credit against the "net tax" in the amount specified on the Tax Credit Certificate.

2. Tax Credits are governed by the year the credit certificate is issued. Once a taxpayer receives a Credit Certificate, they can claim it on their tax return beginning with the year the Certificate was issued. (Rev & Tax Code 17053.85 (a)(2) and 23685 (a)(2) provide that the credit "shall be allowed for the taxable year in which the California Film Commission issues the credit certificate..")

3. Tax credits may be assigned to one or more affiliates. "Affiliate corporation" is defined in the Revenue & Taxation code as *a corporation that is a member of a commonly controlled group as defined in Section 25110 subdivision (b).*

4. Qualified Taxpayers may elect to split the credits and apply a portion to their income tax liability and a portion to their sales & use, however, only one Credit Certificate will be issued to the taxpayer.

5. There is no recapture provision for any Tax Credit Certificates issued.

6. Productions must retain all records pertinent to the Credit Certificate for a minimum of 3 years from the date of filing their tax return claiming the credit.

TAX CREDIT OFFSET AGAINST INCOME TAX LIABILITY:

7. In the case where the credit allowed exceeds the "net tax", the excess credit may be carried over to reduce the "net tax" in the following taxable year, and succeeding five taxable years if necessary, until the credit has been exhausted.

8. Credits applied to income tax liability are not refundable.

9. Tax credits are not reportable as income if they are taken as a credit only. However, if the taxpayer sells the credit, the sale amount is reportable as taxable income. (See Transferable Tax Credits below for more information.)

TAX CREDIT OFFSET AGAINST SALES AND USE TAX LIABILITY:

10. When used to offset Sales & Use tax, credits may be applied only to the state General Fund portion – 5% as of July 1, 2011 (it is believed 5% will be the effective rate throughout 2012 at the minimum). Credit will not apply to: 0.25% state Fiscal Recovery Fund, 0.50% state Local Revenue Fund, 0.50% state Local Public Safety Fund taxes and local Bradley-Burns and transactions and use taxes.

11. Sales & Use tax liability for Company "A" (or its affiliates) applies only to Sales tax liability that Company "A" owes for retail sales to its customers and Use tax liability

that Company "A" owes for purchases subject to use tax, including purchases from out of state vendors and taxable rentals for use in California.

12. Credits cannot be applied to Sales taxes paid by Company "A" to its vendors on Company "A" purchases. Sales taxes paid or owed by California vendors are not the company's sales taxes, even if Company "A" paid sales tax reimbursement to the vendors. When an individual or company pays sales tax on an item purchased from a vendor, the purchaser is actually reimbursing the vendor for the sales tax that the vendor will owe to the state.

13. Refund may only be for taxes paid during the period commencing on the 1st day of the calendar quarter in which the production period (pre-production) began and ending through the due date of the claimant's most recent sales and use tax return.

14. To file a claim for a refund of sales and use tax, the taxpayer must complete Board of Equalization (BOE) form BOE-318, *Irrevocable Election to Apply Credits Against Qualified Sales and Use Tax Liability* (irrevocable election), and file form BOE-101, *Claim for Refund or Credit*.

15. The Board of Equalization (BOE) may issue a refund for qualified sales & use taxes paid through the due date of the claimant's most recent sales and use tax return.

16. Credits may be claimed against sales and use taxes due for the five years following the close of the production period, without regard to the fiscal year from which the credits were allocated. (Production is considered complete when the process of post production has been finished and a final composite answer print, delivery air master, or digital cinema files of the qualified motion picture is produced.)

17. Qualified taxpayers may use certified credits against sales and use tax as soon as they are issued by the CFC. However, certified credits may not actually be assigned until the qualified taxpayer's franchise or income tax return is filed. An affiliate cannot apply the credits against sales and use tax until the credits are actually assigned.

18. Credits may be applied to any General Fund tax liability that may come up as an assessment from an audit (subject to the provisions provided in Revenue and Taxation Code section 6902.5).

TRANSFERABLE TAX CREDITS:

19. **ONLY** qualified taxpayers who receive credits attributable to an "**Independent Film**" may sell these credits to an unrelated party.

20. Qualified taxpayers who have credits attributable to qualified motion pictures whose qualified expenditure budget is over $10 million dollars **cannot** sell or transfer the credits.

21. Credits cannot be sold to more than one party and may not be resold by the unrelated party to another taxpayer or other party.

22. If a taxpayer transfers and sells the credits, the sale amount is reportable as taxable income.

23. If a third party purchases credits from an independent film production, the credits may only be applied to the purchaser's income tax liabilities - not the purchaser's sales and use taxes.

24. A party that purchases tax credits from a qualified taxpayer shall be subject to all the same requirements that apply to the qualified taxpayer.

25. A party that purchases the tax credits must report income on the difference between what they paid and what the credit is worth. For example, Buyer purchases $1 million dollars worth of credits from an independent film for $800,000. Buyer applies that $1 million dollars of tax credits to satisfy her $1 million dollar tax bill. Buyer pays tax on the $200,000.

26. In no event may a qualified taxpayer assign or sell any tax credit that is claimed on any tax return of the qualified taxpayer. Should the taxpayer originally allocated a credit and a taxpayer to whom the credit has been sold both claim the same amount of credit on their tax returns, the FTB may disallow the credit of either taxpayer.

27. The qualified taxpayer selling credits to a non-related party is not required to file an income tax return prior to the sale of the credits.

28. If the taxpayer sells or transfers the tax credit, the taxpayer will need to submit FTB Form 3551 (for independent productions selling or transferring tax credits). https://www.ftb.ca.gov/forms/2012/12_3551.pdf

Useful links

California Franchise Tax Board (FTB)
Administers California's major tax programs: Personal Income Tax and the Corporation Tax
www.ftb.ca.gov/FAQ/film_production_credit
www.ftb.ca.gov/film tax credit/information
www.film.ca.gov/FTB Form 3551

For references to tax codes referred to in SBX3-15:
http://www.ftb.ca.gov/law/legis/09legchng/LC_sbx3_15_0903.pdf

California Board of Equalization (BOE) - collects California state sales and use tax
www.boe.ca.gov/sutax/film_tv_tax_credit.htm

BOE Publication 117, *Filing a Claim for Refund* www.boe.ca.gov/pdf/pub117.pdf

Internal Revenue Service – U.S. Treasury collects Federal Income taxes
www.irs.gov